

FILED

Clerk

District Court

OCT 31 2005

For The Northern Mariana Islands

By _____
(Deputy Clerk)

1 CARLSMITH BALL LLP

2 DAVID LEDGER
JOHN D. OSBORN3 Carlsmith Ball LLP Building
Capitol Hill4 Post Office Box 5241
Saipan, MO 96950-5241
5 Tel No. 670.322.34556 Attorneys for Defendant
7 Aviation Services (CNMI), Ltd. dba Freedom Air8
9 UNITED STATES DISTRICT COURT

10 FOR THE

11 NORTHERN MARIANA ISLANDS

12
13 MOSES T. FEJERAN and
QIANYAN S. FEJERAN,

14 Plaintiffs,

15 vs.

16 AVIATION SERVICES (CNMI), LTD.
17 dba FREEDOM AIR,18 Defendant.
1920
21 CIVIL ACTION NO. 05 - 003322
23 **DEFENDANT'S NOTICE OF
REMOVAL; EXHIBIT A;
CERTIFICATE OF SERVICE**24 Pursuant to 28 U.S.C. §§1331 and 1332, Defendant hereby removes the above action
25 from the Superior Court of the CNMI to this Court on the following grounds:26 1. The above action was filed in the Superior Court of the CNMI as Civil Case No.
27 05-0437E on October 11, 2005, and is now pending in that Court. Defendant first learned of the
28 action on November 11, 2005.2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 in that the
civil action arises under a treaty of the United States, specifically the Warsaw Convention, and


1 all amendments thereto.

2 3. Alternatively, removal is pursuant to 28 U.S.C. §1332 in that the complaint filed
3 in CV05-0437E incorrectly identifies the Defendant as Aviation Services (CNMI) Ltd., a CNMI
4 corporation. Aviation Services (Guam) does business as Freedom Air, owns and operates the
5 aircraft and the disembarkation stair said to be involved in the incident, and manages the flight
6 operations for Flight 200, the flight on which the alleged incident occurred. The only proper
7 Defendant is Aviation Services Ltd. (Guam), a Guam corporation.
8

9 4. Copies of all process, pleadings and Orders served upon Defendant are attached
10 as Exhibit "A" and filed herewith.

11 DATED: Hagåtña, Guam, October 3/, 2005.

12 CARLSMITH BALL LLP

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14 
15 DAVID LEDGER
16 JOHN D. OSBORN
17 Attorneys for Defendant
18 Aviation Services (CNMI), Ltd.
19 dba Freedom Air
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Oct 13 05 10:18a

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p.3

(F)

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DEPT. OF JUSTICE
 SUPERIOR COURT
 FILED
 OCT 13 2005
 SAIPAN, MP

8 Attorneys for Plaintiffs Moses T. and Qianyan S. Fejeran

9 IN THE SUPERIOR COURT
 10 OF THE
 11 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

12 MOSES T. FEJERAN and
 13 QIANYAN S. FEJERAN,

) CIVIL ACTION NO. 05-0437E

14 Plaintiffs,

15 vs.

) COMPLAINT AND DEMAND
 16 FOR JURY TRIAL

17 AVIATION SERVICES (CNMI), LTD.
 18 d.b.a. FREEDOM AIR,

19 Defendant.

COPY

20 Plaintiffs Moses T. Fejeran and Qianyan S. Fejeran, by and through counsel, hereby
 21 allege, as follows:

22 JURISDICTION AND VENUE

23 1. This Court has jurisdiction pursuant to the Commonwealth Trial Act, as
 24 amended, 1 CMC Section 3001 et. seq., and specifically 1 CMC Section 3202.

25 2. The factual and jurisdictional grounds upon which Plaintiffs' claims are
 26 premised entitle Plaintiffs to a trial by jury. Plaintiffs hereby demand a trial by jury on Saipan.
 27
 28

EXHIBIT A

Oct 13 05 10:18a

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P. 4

PARTIES

3. Plaintiff Moses T. Fejeran ("Mr. Fejeran") is an individual and a citizen of the United States of America currently residing in the Commonwealth of the Northern Mariana Islands.

4. Plaintiff Qianyan S. Fejeran ("Mrs. Fejeran") is an individual and a citizen of the United States of America currently residing in the Commonwealth of the Northern Mariana Islands.

5. At all times relevant to this action, the Plaintiffs were, and are, husband and wife.

6. Defendant Aviation Services, Ltd. dba Freedom Air, ("Freedom Air"), on information and belief, is a domestic corporation doing business in the Commonwealth of the Northern Mariana Islands. At all times relevant to this complaint, Freedom Air operated an airline business located in the Islands of Saipan, Rota and Tinian.

FACTS

7. At all times mentioned in this Complaint, Freedom Air, was owned, managed and/or operated by Aviation Services, Ltd.

8. Defendant Freedom Air invited the general public, including Mr. Fejeran, to use their aircrafts to travel to and from the CNMI and the Territory of Guam.

9. On or about January 18, 2005 Mr. Fejeran was a passenger of Freedom Air flight 200 from Saipan to Rota (the "flight").

Oct 13 05 10:18a

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p. 5

10. After the flight landed, Freedom Air personnel positioned a rolling stairway ("the stairway") so as to allow passengers to disembark from the aircraft. As Mr. Fejcran was descending the stairway, because the stairway was unsafe, he lost his footing and fell down striking his right knee on the ground.

11. The fall caused Mr. Fejcran to suffer severe injuries, including, without limitation, a sprained ankle and a torn posterior cruciate ligament all resulting in severe pain. Mr. Fejcran also suffered and continues to suffer significant mental pain and anguish.

12. Mr. Fejcran sought treatment for his injuries at the Commonwealth Health Center ("CHC") where he was treated by Dr. Thomas Austin ("Dr. Austin").

13. Pursuant to orders from Dr. Austin, Mr. Fejcran had magnetic resonance image of his right knee taken by Dr. Nathaniel B. Berg ("Dr. Berg") who concluded that Mr. Fejcran had suffered from a torn posterior cruciate ligament.

14. On information and belief, other passengers have fallen while negotiating the type of stairway in question as they have disembarked from Freedom Air aircraft.

**FIRST CAUSE OF ACTION
NEGLIGENCE**

15. Plaintiff repeats, realleges, and incorporate herein by reference, each and every allegation contained in paragraphs 1 through 14.

Oct 13 05 10:19a

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P. 6

16. Defendant had a duty to maintain its aircraft and the associated embarkation and disembarkation equipment in a reasonably safe condition that would allow people including, without limitation, airline passengers and other invitees to safely enter and exit the aircraft.

17. Defendant breached this duty by, *inter alia*;

- a. Negligently and carelessly failing to install appropriate hand rails and/or other appropriate safety devices for the stairway with a wanton and reckless disregard for the safety of people using the stairway including Mr. Fejeran;
- b. Failing to warn Mr. Fejeran of the danger presented by the unsafe condition of the stairway;
- c. Failing to secure the stairway in question to prevent it from swaying dangerously from side to side;
- d. Failing to properly train flight attendants and station personnel in assisting passengers with safely disembarking the aircraft;
- e. Failing to install a non-slip surface on the stairway; and/or
- f. Failing to clean, dry and/or otherwise maintain the stairs in a reasonably safe condition.

18. Defendant also failed to otherwise exercise due care with respect to the matters alleged in this Complaint.

19. Defendant's breach of the duty owed to Mr. Fejeran caused the stairway to be unreasonably dangerous for his use.

Oct 13 05 10:19a

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P. 7

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2 20. As a direct and proximate result of the negligence of the Defendant as set forth
3 above, Mr. Fejeran lost his footing and fell while descending the stairway.

4
5 21. At all relevant times, Mr. Fejeran exercised due and reasonable care for himself.

6
7 22. As a further direct and proximate result of the negligence of Defendant as set
8 forth above, Mr. Fejeran was severely injured. The injuries caused by the fall, caused Mr.
9 Fejeran to suffer tremendous mental pain and anguish. As a further result of his injuries, Mr.
10 Fejeran has been, is now and will be in the future, prevented from participating in and enjoying
11 the normal pleasures of life to which he was formerly accustomed. Moreover, Mr. Fejeran
12 presently and in the future will continue to suffer physical pain and mental anguish and will
13 continue to incur medical, hospital and related expenses.

14
15 23. By failing to make sure the stairway was safe for guests such as Mr. Fejeran,
16 Defendant acted with a wanton or reckless disregard for the safety and well-being of its guests
17 including Plaintiff Mr. Fejeran.

18
19 24. Accordingly, Mr. Fejeran has sustained and incurred damages in an amount
20 according to proof at trial.

21 **SECOND CAUSE OF ACTION**
22 **LOSS OF CONSORTIUM**

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24 25. Plaintiffs repeat and reallege, and incorporate herein by reference, each and
25 every allegation contained in paragraphs 1-14 and 16 to 24 above.

Oct 13 05 10:19a

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p. 8

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2 26. Before suffering the above-described injuries, Mr. Fejeran was able to, and did,
3 perform all the duties of a husband, including assisting in maintain the home, and providing
4 love, companionship, affection, society, sexual relations, moral support and solace to Plaintiff
5 Mrs. Fejeran.

6
7 27. As a direct and proximate result of the above-described injuries, Mr. Fejeran has
8 been unable to perform the duties of a husband, in that he can no longer assist with the
9 housework, provide love and physical and emotional affection, participate in family,
10 recreational or social activities with Mrs. Fejeran.

11
12 28. Due to the nature and extent of the injuries sustained by Mr. Fejeran, and the
13 severe physical and psychological strains they cause him, Mr. Fejeran is no longer able to
14 provide Mrs. Fejeran with love, companionship, affection, society, moral support and solace.

15
16 29. Because of the above-described injuries, Mr. Fejeran will be unable to perform
17 these duties in the future. Mrs. Fejeran is therefore deprived and will be permanently deprived
18 of her husband's consortium, all to Mrs. Fejeran's damage in a total amount to be established
19 by proof at trial.

20 **PRAYER**

21
22 WHEREFORE, Plaintiffs pray for relief as follows:

- 23
24 i. For general, special and statutory damages in an amount to be proven at trial.
25 ii. For prejudgment interest as allowed by law.
26 iii. For attorney fees and costs of suit.
27 iv. For such other and further relief as may be just and/or what the Court may
28 deem appropriate.

Oct 13 05 10:19a

Freedom Air

472 80

p. 9

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with respect to all issues so triable.

Dated: October 11, 2005.

O'CONNOR BERMAN DOTTS & BANES
Attorney for Plaintiffs Moses T. and
Qianyan S. Fejeran

By: 
David G. Banes
CNMI Bar ID No. F0171


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31 day of October 2005, I will cause to be served, via hand delivery, a true and correct copy of **DEFENDANT'S NOTICE OF REMOVAL; EXHIBIT A** upon the following Counsels of record:

David G. Banes, Esq.
O'Connor Berman Dotts & Banes
Second Floor, Nauru Building
Post Office Box 501969
Saipan, MP 96950

DATED: Hagåtña, Guam, October 31, 2005.

CARLSMITH BALL LLP


DAVID LEDGER
JOHN D. OSBORN
Attorneys for Defendant
Aviation Services (CNMI), Ltd.
dba Freedom Air